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ATTORNEY DOCKET NO. 07038.0003U2
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of)
LESKOVAR) Group Art Unit: 1642
U.S. Application No. 10/087,252)
Filed: March 1, 2002) Examiner: Nickol, G. B.
For: "DRUGS AND METHODS FOR) Confirmation No. 5111
TREATING CANCER"

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NEEDLE & ROSENBERG, P.C.
Customer No. 23859

Sir:

This is in response to the Office Action issued April 2, 2004, wherein restriction of the claims of the above-referenced application is required.

The Office Action requires restriction to one of the following 4 groups of claims:

Group I: Claims 1, 7 and 9, drawn to a method for treating cancer in a subject comprising eliminating suppressor cells in the subject by contacting the suppressor cells with cyclophosphamide and monoclonal or polyclonal antibodies recognizing the suppressor cells;

Group II: Claims 1, 8 and 9, drawn to a method for treating cancer in a subject comprising eliminating suppressor cells in the subject by contacting the suppressor cells with cyclophosphamide and CD-3 or CD-8 positive T-cells;

Group III: Claims 1, 5, 6 and 9, drawn to a method for treating cancer in a subject comprising eliminating suppressor cells in the subject by contacting the suppressor cells with antibodies specific for T-cells; and

Group IV: Claims 1-4, drawn to a method for treating cancer in a subject comprising eliminating suppressor cells in the subject by contacting the suppressor cells with one type of antibody from those listed in Claim 4.

In response, applicant provisionally elects Group I (claims 1, 7 and 9), drawn to a method for treating cancer in a subject comprising eliminating suppressor cells in the subject by contacting the suppressor cells with cyclophosphamide and monoclonal or polyclonal antibodies recognizing the suppressor cells, with traverse.

Further, applicant requests that the restriction requirement be reconsidered because it has not been shown that a serious burden would be required to examine all the claims. M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis added.*)

Thus, for a restriction requirement to be proper, the following two criteria must be satisfied: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that search and examination of the entire application cannot be made without serious burden. *See* M.P.E.P. § 803.

However, it has not been shown that the second requirement has been met, i.e., that it would be a serious burden to search and examine the groups together. Because little or no additional burden would be required to search and examine the groups together, applicant respectfully submits that the groups should be searched and examined together.

For the reasons stated above, applicant respectfully asserts that restriction of the claims as set forth in the present Office Action would be contrary to promoting efficiency, economy and

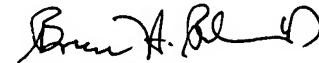
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expediency in the U.S. Patent and Trademark Office and further points out that requirements for restriction under 35 U.S.C. § 121 are discretionary (M.P.E.P. § 803.01). Therefore, applicant respectfully requests that all of the claims of this application be examined together. For these reasons, reconsideration and withdrawal or modification of the restriction requirement is requested.

No fees are believed to be due; however, the Commissioner is hereby authorized to charge any fees that may be required or to credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

NEEDLE & ROSENBERG, P.C.

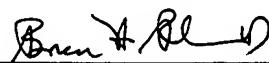


Bruce H. Becker, M.D.
Registration No. 48,884

NEEDLE & ROSENBERG, P.C.
Customer Number 23859
(678) 420-9300
(678) 420-9301 (fax)

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

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Bruce H. Becker, M.D.

4/28/04

Date